APPENDIX

SIMPSON THACHER & BARTLETT
120 Broadway
New York

October 23, 1941

Re *Paul E. Manheim, et al., Appellants* v. *Van S. Merle-Smith, et al., Appellees, in the United States Circuit Court of Appeals for the Second Circuit.*

The Honorable Charles Elmore Cropley,
Clerk of the Supreme Court of the United States,
Supreme Court House,
Washington, D. C.

Dear Sir:

In connection with the above named case, we are forwarding to you, under separate cover, a certified transcript of the Record in the Circuit Court of Appeals for the Second Circuit, together with ten copies of the Record as printed for the court below.

We call to your attention the fact that the Circuit Court of Appeals had before it many thousands of pages of printed and photostated documents in addition to the two printed volumes certified as the transcript by the Clerk of the Circuit Court of Appeals. Only three copies of these documents were furnished the Circuit Court of Appeals pursuant to permission granted under its rules. We, of course, understand that if certiorari is granted the rules of the Supreme Court require the printing of such of these documents as counsel do not agree to omit by stipulation, but we have been informed by the Clerk of the Circuit Court of Appeals for the Second Circuit that we need not

file any copies of these documents in connection with the proposed petition for certiorari. We would appreciate your confirming the correctness of this statement. In passing, we would like to mention that even furnishing ten copies of the documents would be a very expensive and arduous task because of the number of photostats which would be necessary plus the number of printed documents of which less than ten copies are available.

We have also been informed by the Clerk of the Circuit Court of Appeals for the Second Circuit that the three-month period within which the petition for certiorari must be filed runs from the date of the order of the Circuit Court, that is September 23, 1941, and not from the date of the decision which was rendered on August 12, 1941. This result follows, he said, even though the decision affirming the District Court in all respects without costs was completely self-executing and although the delay in entering the formal order was caused by a motion of one of the other appellants to reargue the case, in which motion our client did not join. We would also appreciate your confirming the views of the Clerk of the Circuit Court of Appeals in this respect.

Please furnish us, at your convenience, with an estimate of the cost of printing the additions to the Record necessary to show the proceedings in the Circuit Court of Appeals and for supervising the printing thereof. Because of the large number of parties, 65 copies will be required in lieu of the usual 40. On receipt of a memorandum of your charges, we will see that they are paid promptly.

Very truly yours,

SIMPSON THACHER & BARTLETT.

SIMPSON THACHER & BARTLETT
120 Broadway
New York

October 29, 1941.

Solomon G. Salomon, Esq.,
18 Pine Street,
Woodmere, Long Island,
New York.

Dear Mr. Salomon:

I enclose a photostat of a letter received from the Clerk of the United States Supreme Court in reply to a letter of which I previously sent you a copy.

I talked with Mr. Gaud over the telephone on the question of the exhibits and he was agreeable to my suggestion of filing two copies of the exhibits in Washington pursuant to stipulation, thereby by-passing the question of whether they are in reality exhibits or what the Clerk refers to as "part of the record", and retaining in our possession a set available for use.

In connection with the petitions for certiorari, we have incurred charges for certifying the record in the amount of $10.20 and we are about to pay the deposit of $115 mentioned in the letter of the Clerk. We would greatly appreciate your paying half of these amounts at this time since our client is urging us to collect from you one-half of the charges in the Supreme Court and as much as possible of the printing expense incurred in the Circuit Court of Appeals.

Very truly yours,

WALTER E. BEER, JR.

(Enc.)

OFFICE OF THE CLERK,

SUPREME COURT OF THE UNITED STATES,

WASHINGTON, D. C.

October 27, 1941

Simpson, Thacher & Bartlett, Esquires
New York, New York

Gentlemen:

I have your letter of October 23d, together with the original and ten additional copies of the record in the case of *Manhein* v. *Merle-Smith.*

I estimate that a deposit of $115.00 will be required to print the appellate proceedings and to docket the case. Upon the receipt of this deposit the necessary printing will be undertaken and you will be furnished with one complete copy of the record. Kindly advise me as to how many copies of the printed Circuit Court of Appeals proceedings you desire.

I believe the Clerk of the Circuit Court of Appeals is correct in his assertion that the time for filing your petition runs from the date of the order for mandate, September 23d, rather than from August 12th. The order for mandate issued in the Second Circuit is tantamount to a judgment and until such order is entered there is nothing for this Court to review.

I am not altogether clear on the matter of the printed photostatic documents mentioned in your letter. If these were original exhibits they may be forwarded to this office

and referred to in your briefs and argument, and it will not be necessary that they be printed. They will be returned to the Clerk following the final disposition of the case by this Court.

If the papers referred to are in reality a part of the record then it will be necessary that they be printed or a stipulation of counsel entered into providing that they need not be re-printed. In any event they should be before the Court upon its consideration of the petition for certiorari rather than waiting until the petition is granted.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk

By E. P. CULLINAN
E. P. Cullinan
Assistant

EPC:EG

SIMPSON THACHER & BARTLETT
120 Broadway
New York

November 25, 1941

Manheim, et al. v. *Merle-Smith, et al.*

Solomon G. Salomon, Esq.
18 Pine Street
Woodmere, L. I., N. Y.

Dear Mr. Salomon:

A stipulation has been signed by all the attorneys for the parties to the above entitled proceeding agreeing to the filing of two copies of exhibits used in the Circuit Court of Appeals in the Supreme Court of the United States in lieu of having any of them reprinted.

I should appreciate your dropping in at our office for the purpose of signing the stipulation at your convenience, or if that is not convenient your telling me where I might send the stipulation to you to have it signed.

Sincerely yours,

WALTER E. BEER, JR.

18 Pine Street
Woodmere, New York
November 26, 1941

Simpson, Thacher & Bartlett
Att. Mr. Walter E. Beer, Jr.
120 Broadway
New York City

My dear Mr. Beer:

I have your letter of November 25. Before answering same, I want to expain that I have not been entirely well and have not been in the City except once, and for only a short time, since I saw you last.

IN RESPECT TO THE STIPULATION; I am willing to sign same if the intention is to have it approved by one of the judges and thereby made the order of the Supreme Court.

You will remember that our adversaries promised to supply ten sets of the exhibits if we should find it necessary to petition for certiorari. My recollection is that you have complete sets or almost complete sets so that binding eight more should not be too onerous.

It seems to me and, as you know, I have always complained that the adversaries stuffed the record with unnecessary exhibits. I think the proper course at this time may be to reach an agreement as to the exhibits that are actually required for determination of the matters involved. I do think it desirable that the court have available sufficient exhibits to determine whether or not this case is of such nature that, lawfully and justly, it should be reviewed by the Supreme Court.

I happen to know that our adversaries have enough available material to complete the needed exhibits.

Very truly yours,

SOLOMON G. SALOMON

SGS:HED

SIMPSON THACHER & BARTLETT

120 Broadway

New York

November 29, 1941.

Re Manhattan-Interborough Matter

Solomon G. Salomon, Esq.,
18 Pine Street,
Woodmere, Long Island

Dear Mr. Salomon:

This is to acknowledge receipt of your letter, dated November 26, 1941. I can well understand your desire to have my client go to additional expense and to have this firm do more work at no expense whatever to you. Nevertheless, I have decided to send the stipulation to the Supreme Court Clerk without your signature.

Very truly yours,

WALTER E. BEER, JR.

18 Pine Street
Woodmere, New York
December 4, 1941

Simpson Thacher & Bartlett
Att. Mr. Walter E. Beer, Jr.
120 Broadway
New York City

My dear Mr. Beer:

I received your lines of November 29, in due time, but have allowed myself a cooling-off period before answering.

I don't understand your mental process when you say—you can well understand my desire to have your client go to additional expense and make your firm do more work at no expense, at all, to me. It seems to be a wise precaution, even if it were not the rule, to have any stipulation we enter into with our opponents, made the order of the Court as we have done previously.

Who are we to presume that exception to the rule should be made for us? Is it that you question the wisdom of the rule? In fact, how much is the expense you speak of?

You had drawn the stipulation before you wrote to me on November 25; all you asked was that I drop in to sign. To this I replied, "IN RESPECT TO THE STIPULATION; I am willing to sign same if the intention is to have it approved by one of the judges and thereby made the order of the Supreme Court".

You say, "Nevertheless, I have decided to send the stipulation to the Supreme Court Clerk without your signature".

Do you mean by this that it is not necessary to have one or some of the judges approve your stipulation?

In my appeal to the C. C. A., I appealed from the termination of the receivership. As I see it, the correct termination is the most important administrative act in any receivership. To put it mildly, I don't understand how there could have been any doubt in your mind that the "Unification Statute" does not authorize the winding up of any receivership.

I explained to you time and again that, (1) all the statute did was to authorize the City to acquire property; (2) nothing could stop the foreclosure of the Interborough mortgage; but, (3) for the many and various reasons I explained to you, the foreclosure of the Manhattan Consolidated mortgage was not lawfully and equitably feasible. I, also, explained to you, time and again, at length, and certainly courteously, that on March 15, 1940, Manhattan Company was undoubtedly solvent.

Even though you agreed with me, you obdurately refused to make your appeal coincide with mine. Even though it was self-evident that you didn't need to argue in the circuitous manner you chose, because the tail goes with the hide, you insisted that you would, nevertheless, not dispute the legality of the foreclosure and, nevertheless, would be safe. The result was that which you are well aware of.

I thought it was tacitly understood that you knew I had saved your bacon, because I covered over the interests of the Second Mortgage Bonds by reason of my firm stand, not only in respect to them, (my smallest interest), but because of my interest in face amounts of $47,000 First Mortgage Bonds and $56,000 of Guaranteed Stock.

I need to know what you mean by the last sentence of your letter of November 29. Do you insist that it is not

necessary to have a judge of the Court, rather than the Clerk, have cognizance of and approve the stipulation?

I lent you, among other documents, the motion passed upon by Judge Reed to postpone consideration of the aborted petition and cross-petition in *Murray* v. *Roberts*. I cannot for the life of me see where that motion differs, in any way whatsoever, nor as to what is necessary in the case of your stipulation.

Very truly yours,

SOLOMON G. SALOMON.

SGS:HED

18 Pine Street
Woodmere, New York
December 9, 1941

Simpson Thacher & Bartlett
Att. Mr. Walter E. Beer, Jr.
120 Broadway
New York City

My dear Mr. Beer:

I was sorry to have been compelled to write to you, on December 9th, ult., setting forth what needed to be said because of your letter of November 29th.

I hope you will now understand, I have no desire to have your client go to additional expense nor to have your firm work for me at no expense whatever to me. I will explain this further hereinafter.

I hope you will now also understand your closing sentence was unjustified, because I had clearly stated my willingness to sign the stipulation, if it was to be made the Order of the Court, through approval thereof by one of the Justices.

I do not intend to be tricked by the Respondents into believing the mere stipulation, without judicial approval, suffices to suspend the rule that ten (10) copies of the exhibit-items must be furnished with the required Record and other data, such as briefs, etc. As I pointed out in my letter, there should be no difficulty in obtaining sufficient material to make up eight (8) additional sets of the required material—i.e., exhibits. I pointed out at the same time, that an abridgement of the Record seemed to be in order at the present time; and that when this is done, it will be child's play to bind them together, and certainly

not expensive, and to tab them, so as to be handy for examination by the Justices.

I think it would be an imposition upon the Supreme Court not to abridge the Record, insofar as the exhibits are concerned, and expect the Justices to wade through the mass of exhibits in the several volumes that constitute the present unabridged Record.

I happen to know that such unwarranted procedure was attempted in the Gilcrist case, (279 U. S. 159), which is the direct antecedent of the Fare Case, (257 N. Y. 20), and that the Record was sent back for abridgement before the Court would hear the matter. I certainly do not wish to present myself to the Supreme Court in such light, and, I hope, you will see that I was not looking for anything that is not as beneficial to you as to myself.

Returning now to the question of whether you have been working for me, I ask that you give consideration to the following which, I think, are abundantly clear on the record of things to the present:

FIRST—On page 208 of the C. C. A.'s Opinion of August 12th last, it "hangs its hat" on the proposition that you do not question the transfer of the Manhattan property to the City via Article Two (2) of the Plan. The Opinion, very clearly, continues on that note, up to the closing paragraph on page 2017, and then evades the questions raised by my appeal, by saying these are answered in disposing of your appeal. As I see it, they either didn't read my brief or were purposely evading it.

SECOND—If you will read Mr. Gutman's and my record before Judge Patterson, (R., Vol. II, pp. 879-87, March 6, 1940), you will see that both of us objected to the fore-

closure of the Consolidated Mortgage and claim that it was invalid, and similarly, that the so-called Compromise of Claims and Establishment of the "Settlement Fund", via Article Five (3) of the Plan, was invalid. Same inevitably leads to the fact that the Plan is not feasible as a matter of law.

THIRD—My appeal and brief in the C. C. A. was expressly and distinctly to the same effect.

FOURTH—Under the doctrine in *Bogert* v. *So. Pac. Co.*, (250 U. S. 483, 489), referred to on page six (6) of my Reply Brief, I preserved your case. That is what I meant by saving your bacon.

In view of the said four things, it seems to me that I have been working for you and your client as well as myself, and not that you have done anything for me, so far as worthwhile work is concerned.

I need to know, for obvious reasons, whether or not the stipulation was sent to Washington to have it made the Order of the Court. Certainly, I am entitled to that information. I, therefore, in good humor and in good faith, but nevertheless firmly, request an immediate reply.

Sincerely yours,

SOLOMON G. SALOMON

SGS:HED

SIMPSON THACHER & BARTLETT
120 Broadway
New York

December 10, 1941.

Solomon G. Salomon, Esq.,
18 Pine Street,
Woodmere, Long Island,
New York.

Dear Mr. Salomon:

In reply to the last paragraph of your letter of December 9, 1941, I wish to state that the stipulation to which you refer was sent to us but no instructions were given to have it made the order of the Supreme Court of the United States. The procedure followed was suggested by the Clerk of the Supreme Court.

I am returning to you herewith the briefs and petitions for certiorari in the case of *Murray* v. *Roberts* which you previously sent me.

Very truly yours,

WALTER E. BEER, JR.
A. L.

(Encs.)